IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2952 OF 2004
AND
WRIT PETITION NO.2965 OF 2004

The Maharashtra State of Co-operative Bank Limited, having its Registered Office at Sir Vithaldas Thackersey Memorial Building, situated at 9, Maharashtra Chamber of Commerce Lane, Mumbai - 400 021. ..Petitioners

Vs.

1. Smt.Bharati Prabhakar Kakade,
2. Mr.Nitin Prabhakar Kakade,
3. Ms.Pratiba Shivajirao Ganjave,
4. Mr.Prasad Shivajirao Ganjave,
5. Ms.Pratidnya Shivajirao Ganjave,
6. Mr.Ashok Dnyanesh Mansukh,
7. Mr.Rahul Ashok Mansukh,
8. Mr.Shirish Dnyanesh Mansukh,
9. Ms.Shantabai Dnyanesh Mansukh,

All indian inhabitants and are carrying on business in the name and style and are the partners of M/s.Ajanta Lodge also known as Hotel Shreevaee, a firm registered under provisions of Indian Partnership Act and carrying on business at 343/345, Jagannath Shankar Seth Road, Mumbai - 400 004. .. Respondents /Landlords

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Shri B.G.Vaidya for the petitioners in both the petitions.

Shri V.A.Thorat, Sr.Counsel with Shri N.J.Devashree for the respondents in both the petitions.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 11TH OCTOBER, 2004.

ORAL JUDGMENT :

1. Since common questions of law and facts arise in these petitions, they were heard together and are being disposed of by this common judgment.

2. Heard the learned advocates for the parties. Perused the records.

3. The impugned judgment and decree passed by the lower appellate court dismissing the appeal filed by the petitioners against the judgment and decree of eviction passed by the trial Court on the ground of personal need of the premises to the respondents/ landlords has been challenged on the ground that the Courts below have wrongly relied upon the decision of

the Apex Court which has been already overruled by the Apex Court subsequently, and secondly that the petitioners having been inducted in the suit premises on the contract basis for a period of 10 years, no suit could have been instituted prior to the expiry of the contractual period, and in terms of Section 53-A of the Transfer of property Act, the petitioners are entitled for a protection of the possession of the suit premises till the expiry of the contractual period. According to the learned advocate for the petitioners, the Courts below have totally ignored the said aspect. The learned Senior Counsel appearing for the respondents has stated that the plea as regards the overruling of the decision of the Apex Court, which has been relied upon by the Courts below as well as the applicability of the provisions of Section 53A of the Transfer of Property Act was neither raised before the Courts below nor even raised in the present writ petitions and no factual foundation has been laid down by substantiating the said plea. The learned advocate for the petitioners has drawn attention to the decision of the Apex Court in **Laxmidas Bapudas & Anr. v. Smt.Rudravva & Ors.,** reported in AIR 2001 SC 3738 in support of the contention that the decision in the matter of **Laxmidas Venkateshwara Enterprises Pvt.Ltd. v. Syeda Vajhiunnissa Begum,** reported in

(1994) 2 SCC 671 has been overruled and further has also relied upon the decision of the Apex Court in **M/s.Technicians Studio Pvt.Ltd. v. Smt.Lila Ghosh,** reported in AIR 1977 SC 2425 in support of the contention that, in the facts and circumstances of the case, the petitioners are in possession in terms of the contract for the fixed period.

4. The records apparently disclose that the Courts below have arrived at the concurrent findings on the point of bonafide need of the premises to the respondents on a detail analysis of the evidence, and indeed, no arguments have been canvassed to challenge the same.

5. As regards the contention that the decision of the Apex Court in **Laxmidas Venkateshwara's case (supra)** was overruled in **Laxmidas Bapudas Darbar's case (supra)** is concerned, undoubtedly, the Apex Court in **Laxmidas Bapudas Darbar's case (supra)** has observed that "With great respect therefore, in our view, the decision in the case of Dhanpal Chettiar (supra) has not been correctly construed in the case of Sri Lakshmi Venkateshwara Enterprises Pvt.Ltd. (supra) and it no more holds good not the Full Bench decision following it, in the case of Bombay Tyres

International Ltd.(supra). The earlier judgment of the Full Bench of the High Court in the case of Sri Ramakrishna Theatres Ltd.(supra) lays down the law correctly. (AIR 1979 SC 1745)." However, these observations were made in relation to the ruling given by the Apex Court earlier in the same judgment which read that "the non-obstante clause contained under Section 21 of the Act will override any condition in any contract which may provide a ground for eviction other than those enumerated in Clauses (a) to (p) of sub-section (1) of Section 21. Such an additional ground in a contract shall be rendered ineffective." And further it was ruled that "the effect of the non-obstante clause contained in Section 21 of the Karnataka Rent Act on the fixed term contractual lease is as follows:-

(i) On expiry of period of the fixed term lease, the tenant would be liable for eviction only on the grounds as enumerated in Clauses (a) to (p) of sub-section (1) of S.21 of the Act.

(ii) any ground contained in the agreement of lease other than or in addition to the grounds enumerated in Clauses (a) to (p)

of sub-section (1) of S.21 of the Act shall remain inoperative.

(iii) proceedings for eviction of a tenant under a fixed term contractual lease can be initiated during subsistence or currency of the lease only on a ground as may be enumerated in Clauses (a) to (p) of sub-section (1) of S.21 of the Act and it is also provided as one of the grounds for forfeiture of the lease rights in the lease deed, not otherwise."

Undisputedly, the agreement in question does provide for such clauses.

6. Undoubtedly, in **M/s.Technicians Studio's case (supra),** the Apex Court has observed that "the payment and acceptance of rent made in terms of the registered compromise petition did not give rise to a right of tenancy and on the expiry of the said period he had no protection against eviction." It has also been held therein that "the petition of compromise required registration, and this not having been done it could not create any interest in favour of the appellant in

the premises though he was entitled to protect his possession for a period of sixteen years under Section 53A of the Transfer of Property Act." Undoubtedly, as has been contended by the learned Senior Counsel for the respondents, the question of going by the applicability of this provision or taking shelter of the decision of the Apex Court in **M/s.Technicians Studio's case** or **Laxmidas Bapudas Darbar's case** to challenge the impugned judgment and decree does not arise at all, as the necessary foundation in that regard has not been laid by the petitioners, nor a specific plea has been raised in the lower appellate Court as also in this Court in the writ petitions itself. That apart, even as per the records before this Court, as rightly submitted by the learned Senior Counsel for the respondents, it is undisputed fact that the petitioners have been inducted in the premises not by the landlords but by the monthly tenant and certainly the monthly tenants cannot create a tenancy for the period beyond the lease period as otherwise sought to be claimed by the petitioners in the petition. Besides, even assuming that there was a contract for a period of 10 years, admittedly, it expired in 2003 and thereafter there cannot be any protection to the petitioners in relation to the premises.

7. Taking into consideration all the materials on record, there is absolutely no case for interference in writ jurisdiction in the impugned order passed by the lower Appellate Court. The same does not disclose any finding contrary to the records nor there is any finding which can be said to be perverse.

8. It also needs to be recorded that the learned senior counsel for the respondents stated that whatever the excess amount had been paid in relation to the suit premises which is subject matter of Writ Petition No.2965 of 2004, and is with the respondents-landlords, it will be refunded to the petitioners after deducting the amount due and payable by the petitioners to the respondents on account of their occupation in the premises and such refund would be made at the time of delivery of vacant and peaceful possession of the premises by the petitioners to the respondents.

9. In the result, therefore, while recording the above statement on behalf of the respondents, there being no case for interference under Article 227 of the Constitution of India, the petitions are liable to be rejected and accordingly are hereby rejected.

10. On oral request by the learned advocate for the petitioners, the execution of the impugned and decree shall stand stayed till 31st January, 2005 subject to the petitioners filing usual undertaking before the Registrar (Judl.) to the effect that the petitioners shall deliver the vacant and peaceful possession of the suit premises to the respondents/landlords on or before the 31st January, 2005 and meanwhile neither any third party interest in respect of the suit premises will be created nor any third party will be inducted therein nor shall part with the possession of the suit premises in favour of any third party.

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